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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

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THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD RAY BREDFIELD,

Defendant and Appellant.

C041346

(Super. Ct. No.  
SCCRF 99-2126)

Based on the expert opinions of two clinical psychologists, the trial court twice found defendant Donald Ray Bredfield incompetent to stand trial and both times committed him to Atascadero State Hospital (Atascadero). Following each court commitment to Atascadero, defendant was transferred to Napa State Hospital (Napa) without court approval, and each time the medical director of Napa certified that defendant was competent to stand trial. A jury thereafter convicted defendant of eight counts of forcible lewd act on a child (Pen. Code, § 288,

subd. (b))<sup>1</sup> with aggravated circumstances within the meaning of section 667.61, subdivision (b).

On appeal, defendant asserts the court denied him the procedural rights required by statute as a prerequisite to a finding that his competency had been restored. Here, the competency finding was made only after certification by the director of a hospital to which defendant had not been legally committed. We therefore must reverse the judgment.

### **FACTS**

The only facts relevant to the dispositive issue raised in this appeal involve the manner in which defendant was found alternatively incompetent and competent and incompetent and competent to stand trial. Those proceedings began in January of 2000 when his lawyer doubted his competency and the trial court instituted a competency inquiry pursuant to section 1368. The court appointed two clinical psychologists to examine defendant and to file reports as to his ability to understand the proceedings against him and to assist his lawyer in defending against the charges.

Both psychologists found defendant incompetent to stand trial. Kent R. Caruso, Ph.D., reported that defendant suffered "some form of severe organic brain syndrome or dementia." He "could not process, analyze, manipulate, or utilize various forms of auditory-verbal input unless it was accompanied by a

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<sup>1</sup> All further statutory references are to the Penal Code.

related visual stimulus . . . [and] could not find or make appropriate connections between different words, ideas, and concepts."

Caruso subjected defendant to a series of tests. On two tests used to determine cognitive ability, defendant scored zero. Caruso explained, "On this administration of the Wechsler Memory Scale Mr. Bredfield obtained a memory quotient of 59, which falls well below average; and in this case was evidence that he is suffering from some organic or neurocognitive deficits that are interfering in a number of ways with his abilities to process/perceive, analyze, recall, and/or utilize even simple and often concrete forms of auditorially perceived information. He did very poorly on current and personal information, but adequately in orientation; he scored far below average in mental control, poorly in short term auditory memory; and his scores in associative learning and logical memory essentially could not have been any lower. All of these results would indicate that Mr. Bredfield would have a very difficult time interacting or interfacing in a verbal problem solving activity with his attorney, or with anyone else, for more than the briefest periods of time; and/or attempting to deal with any complex forms of information, or informational exchange and problem solving requiring analytical and critical thinking." Caruso concluded that defendant would not be able to assist his attorney in a rational manner and therefore was not competent to stand trial. He recommended the court transfer defendant from the jail to Atascadero.

Ray H. Carlson, Ph.D., the second expert, concurred. He characterized defendant's mental state as "aberrant." He attributed defendant's mental condition, at least in part, to allegedly having been hit on the back of the head by a police officer. He suffered organic brain injury and epilepsy. "His difficulties with reading suggest most likely that the blow and the subsequent hematoma affected the posterior temporal lobe and perhaps the occipital lobe. There seems to be no question that there is a retrieval problem associated with rear temporal lobe damage." Like Caruso, Carlson concluded defendant understood the nature of the charges against him but lacked the cognitive and communicative ability to assist in his defense. He found that defendant was not malingering.

Judge Robert Kaster read and considered Dr. Caruso's and Dr. Carlson's reports and found "based upon the evidence present the defendant is not competent to stand trial pursuant to PC §1367." The Central Valley Conditional Release Program recommended that defendant be committed to Atascadero as incompetent to stand trial. On April 4, 2000, Judge Kaster accepted the recommendation and ordered the sheriff to deliver defendant to Atascadero "for the care and treatment of the mentally disordered, pursuant to PC §1370(a)(1)(B)(i)."

Without court approval, defendant was "administratively transferred" from Atascadero to Napa on June 7, 2000. Nevertheless, on July 21 the Atascadero treatment team prepared a periodic evaluation pursuant to section 1370. The Atascadero team concluded that he suffered "a mental illness or defect that

could interfere with his ability to cooperate with an attorney in the preparation of a defense. The recommendation at this time is that he be retained and treated."

Napa submitted a similar evaluation to the court on August 10. "It is our opinion that Mr. Bredfield continues to manifest a mental illness which would interfere with his ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of his defense in a rational manner." The team recommended further treatment.

The Napa treatment team changed its assessment two months later, and the medical director certified that defendant was then competent to stand trial. The team described a pattern of malingering. "Mr. Bredfield's unit behavior includes the dynamics associated with psychopathic personality including conning and manipulation, pathological lying and a grandiose sense of self worth. This pattern of behavior is present in both staff and peer interactions and it is associated with malingering symptoms to achieve personal goals. A consultation team of two psychologists supported the presence of psychopathy with a rating of 33 on the Hare Psychopathy Checklist-Revised." The team concluded defendant had regained mental competence.

Defendant, however, filed a motion for a declaration of doubt regarding his competence to stand trial. He resubmitted Drs. Caruso's and Carlson's reports as well as a new report from John Watts Podboy, Ph.D. Podboy wrote that "while this defendant is in all probability embellishing certain aspects of his presentation, there is considerable and very persuasive

evidence of an irrefutable nature that he has suffered central nervous system insults in the form of head trauma, a seizure disorder for a period of time, and the voluntary ingestion of toxic substances which have certainly compromised his overall cognitive functioning, including his emotional capabilities." Once again, a psychologist concluded defendant was not competent to stand trial. Based on this evidence, another judge, Frank Peterson, again declared a doubt as to defendant's competency to stand trial and suspended criminal proceedings.

The court reappointed Drs. Caruso and Carlson to prepare reevaluations. While both psychologists believed defendant had improved since their first evaluations, Caruso opined that he was competent to stand trial; Carlson disagreed.

On May 8, 2001, Judge Lee Cooper found defendant was incompetent to stand trial. Again, the Central Valley Conditional Release Program recommended that the court commit defendant to Atascadero. Again, the court ordered the sheriff to deliver defendant to Atascadero for the care and treatment of the mentally disordered.

Yet defendant, for reasons not apparent in the record, was transferred to Napa. In September 2001 the Napa treatment team opined "that Mr. Bredfield continues to manifest a mental illness which would interfere with his ability to assist counsel in the conduct of his defense in a rational manner." Based on the team's recommendation, Judge Kaster ordered that "defendant be retained at Napa State Hospital for continued treatment."

Two months later, Napa's medical director again certified that defendant was mentally competent. But on December 28, 2001, defense counsel reiterated his doubts as to whether his client had been restored to competency. The court ruled that defendant bore the burden of proof and was not entitled to a jury trial. Counsel submitted the issue of competency on the documents on file. Judge Chris Stromsness found defendant competent to proceed with the criminal case.

### **DISCUSSION**

The California Legislature adopted a comprehensive statutory scheme to give concrete substance to an accused's right under the due process clause of the Fourteenth Amendment to the United States Constitution to stand trial only if and when he is mentally competent. (*Godinez v. Moran* (1993) 509 U.S. 389, 396 [125 L.Ed.2d 321, 330]; § 1367 et seq.) A criminal defendant is incompetent and may not be tried or convicted if "as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner." (§ 1367, subd. (a).)

Defendant alleges he was not accorded the protection expressly provided by the statute in at least two fundamental respects. First, he argues that in violation of sections 1370, subdivision (a)(5) and 1372, subdivision (a)(1), a medical director of Napa erroneously certified his competency had been restored although the court had legally committed him to Atascadero. And second, he insists the court failed to appoint

two psychiatrists or psychologists to examine him prior to the competency hearing in violation of section 1369, subdivision (a). Because we agree with defendant's first contention, we need not reach the second.

According to the express language of the statute, the trial court selects the appropriate state hospital for an accused found incompetent to stand trial. Section 1370, subdivision (a)(5) provides: "When directing that the defendant be confined in a state hospital pursuant to this subdivision, the court shall select the hospital in accordance with the policies established by the State Department of Mental Health." (*People v. Murrell* (1987) 196 Cal.App.3d 822, 826.) The statute also directs the medical director of the state hospital to which the defendant has been committed to assess whether the defendant's competency has been restored. Section 1372, subdivision (a)(1) clearly states: "If the medical director of the state hospital or other facility to which the defendant is committed . . . determines that the defendant has regained mental competence, the director shall immediately certify that fact to the court by filing a certificate of restoration . . . ."

We agree with defendant that, taken together, these provisions vest sole authority in the medical director of the state hospital selected by the court, and to which defendant was committed, to certify defendant's restoration to competence. Moreover, the medical director of Atascadero appears to have recognized his obligation under the statute by submitting a



report to the court regarding defendant's competency even after defendant was transferred to Napa.

Although defendant had been transferred from Atascadero to Napa on June 7, 2000, the medical director of Atascadero submitted a report to the court on July 21, 2000, concluding that defendant remained incompetent to stand trial. Yet after defendant was again found incompetent by the court and returned to Atascadero and was again transferred to Napa, the medical director of Napa found defendant's competency restored. The certification by a substitute medical director violated the terms of the statute. The Attorney General summarily dismisses defendant's argument that the Napa medical director had no statutory authority to issue the certification of competency. We disagree with the Attorney General.

Nor do we accept the Attorney General's analogy to the state prison system. The Attorney General insists that defendant was committed to the Department of Mental Health in the same way a criminal defendant is committed to the Department of Corrections. Not so. Section 1202a specifically provides that a convicted person is to be "delivered into the custody of the Director of Corrections at the state prison or institution designated by the Director of Corrections as the place for the reception of persons convicted of felonies . . . ." A mentally incompetent defendant has not been convicted of any crime. Section 1370, unlike section 1202a, requires the court to select the appropriate hospital. Whereas the Department of Corrections must select the appropriate prison for a person convicted of a

crime, the court must determine the appropriate hospital. We are not at liberty to ignore the express language of section 1370 in order to treat the mentally incompetent like prisoners. The analogy, quite simply, is inapt.

Nor does section 1404, as the Attorney General suggests, render the error harmless. Section 1404 provides: "Neither a departure from the form or mode prescribed by this code in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right." Here, three judges, a medical director of Atascadero, three psychologists, and two treatment teams found defendant incompetent to stand trial. The certification of the medical director of Napa that defendant was competent to stand trial, despite the considerable evidence to the contrary, clearly "tended" to defendant's prejudice. But for that certification, defendant could not have been tried and convicted of the charged offenses.

#### **DISPOSITION**

The judgment is reversed. Having thus reversed the judgment, "it is unnecessary to address any other issue raised by the parties in their briefs on appeal." (*People v. Castro* (2000) 78 Cal.App.4th 1402, 1420.)

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RAYE, J.

We concur:

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BLEASE, Acting P.J.

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HULL, J.